

subsequent June 16, 1994¹² field visit, Mr. Viglione determined that 5 broadcast stations received interference on the following devices¹³:

- (1) a JVC PCW Boom Box
- (2) a Pioneer PIO AZ100
- (3) a SONY ICFC243G clock radio
- (4) a Proton radio
- (5) a Realistic clock radio
- (6) a SONY CVS-W303 Boom Box

On the JVC PCW Boom Box, Mr. Viglione observed that with WRQI off the air 107.9 MHz (WHEN(FM), Syracuse, NY, BLH-781024AG) could be received with no interference and when WRQI was on the air 107.9 MHz could not be received. On the Pioneer PIO AZ100 receiver, Mr. Viglione observed that with WRQI off the air 89.9 MHz (WRVO(FM), Oswego, NY, BLED-1824) could be received with no interference and when WRQI was on the air 89.9 MHz could not be received. On the SONY ICFC243G clock radio, Mr. Viglione observed that with WRQI off the air 90.5 MHz (WBER(FM), Henrietta, NY, BLED-850225KR) could be received with no interference and when WRQI was on the air 90.5 MHz could not be received. On the Proton radio, Mr. Viglione observed that with WRQI off the air 96.5 MHz (WCMF(FM), Rochester, NY, BLH-840501CZ) could be received with no interference and when WRQI was on the air the Proton radio received a mix of WCMF(FM) and WRQI. On the Realistic clock radio, Mr. Viglione observed that with WRQI off the air 88.5 MHz (WRUR(FM), Rochester, NY, BLED-1378) could be received with no interference and when WRQI was on the air 88.5 MHz could not be received. On the SONY CVS-W303 Boom Box, Mr. Viglione observed that with WRQI off the air 88.5 MHz (WRUR(FM), Rochester, NY, BLED-1378) could be received with no interference and when WRQI was on the air 88.5 MHz could not be received. In addition, Mr. Viglione also observed that the Phillips mini stereo received no harmful interference.

In regard to telephone service, the Mullers state they still receive telephone interference from WRQI. They state that occasionally they hear WRQI and static on their phones, and lose the dial tone and callers while they are talking. We have determined that these problems are a Rochester Telephone Company problem and are external to the Muller's house. Further, no WRQI interference was observed to the telephones during their inspection. Again, this determination was based on the staff's observations and conversations between Mr. Viglione and Ms. Helen Payne. Ms. Payne said Rochester Telephone Company will investigate the Mullers' telephone problems.

Accordingly, based on the inspection by Commission personnel, we find this complaint IS NOT RESOLVED since the Mullers are still receiving

¹² The Commission offered WRQI an opportunity to send a representative to observe the WRQI transmitter on and off tests. Ed Lavergne states in his June 16, 1994 letter that Mr. Suffa and Mr. Groth could not attend due to scheduling conflicts.

¹³ In making these findings, Mr. Viglione observed that there has been no change to the equipment between the staff's April 12, 1994 visit and his visit on June 16, 1994.

blanketing interference caused by WRQI. Therefore, WRQI has not fulfilled its obligation pursuant to 47 C.F.R. § 73.318.

Other Issues

The April 29, 1994 letter from Thomas Jay Solomon raised various issues regarding WRQI's blanketing interference. We shall now address these issues, as well as related issues raised by Mr. Suffa.

Telephone Interference

We note that WRQI has made attempts to remedy complaints of telephone interference. However, the interference caused by WRQI to telephones does not form a basis for determining whether WRQI has fulfilled its obligation to the complainants. 47 C.F.R. § 73.318(b) states, in pertinent part, that "[t]hese requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas or antenna booster amplifiers. Mobile receivers and non-RF devices such as tape recorders or hi-fi amplifiers (phonographs) are also excluded." Hard-wired telephones are considered non-RF devices under § 73.318 and as such are not covered by this rule. Cordless telephones are covered by Part 15 of the Commission's rules.¹⁴ Section 15.5(b) states, in pertinent part, that cordless telephones may not cause harmful interference and that interference to cordless telephones caused by the operation of an authorized radio station must be accepted.¹⁵ Accordingly, the telephones referenced in this case are not covered by the blanketing interference rule, § 73.318, and have not been a basis for our decision.

Physical Damage to the Muller's Residence

The Commission does not have the jurisdiction or the expertise to decide whether physical damage to the Muller residence was caused by negligent wiring by WRQI-authorized personnel and, if so, who shall be held liable for monetary damages. In addition, the ends of administrative uniformity would not be advanced by Commission resolution of these issues.¹⁶ In these respects, these issues are similar to private contractual matters, as to which it is well settled

¹⁴ See § 15.3(j) for cordless telephone system definition.

¹⁵ Cellular telephones are considered RF devices and are licensed under Part 22, Subpart K. However, this case does not involve any cellular telephone complaints.

¹⁶ We note that the doctrine of primary jurisdiction would therefore be inapplicable to such issues. See, e.g., Nader v. Allegheny Airlines, Inc., 426 U.S. 290, 304 (1976); Kellerman v. MCI Telecommunications Corp., 493 N.E.2d 1045, 1052 (Ill. 1986); Operator Services Providers of America, 6 FCC Rcd 4475, 4477 (1991) ("Section 414 of the [Communications] Act preserves the availability . . . of such preexisting state remedies as tort, breach of contract, negligence, fraud, and misrepresentation").

that the Commission does not involve itself, but instead leaves them for resolution by a local court of competent jurisdiction. See Horizon Communications Corp., 61 FCC 2d 498, 503 (1976); John L. Runner, Receiver (KBIF), 36 RR 2d 773, 778 (1976); Trans-Continent Television Corporation (WROC-TV), 21 RR 945, 956 (1961) ("Commission has neither the authority nor the machinery to adjudicate" such matters). Therefore, we conclude that the issues of negligence, liability, and damages are likewise beyond the Commission's jurisdiction to decide, and we shall not address those issues.

Radiofrequency Radiation

The Mullers are concerned about the biological effects of radiofrequency radiation on their health and on the health of their cattle. Mr. Muller stated that since 1990 he has had several unusual calf deaths and recently a calf was born dead with seven legs. There is no evidence to support the Muller's suggestion that WRQI's facilities are exposing the Mullers or their cattle to radiofrequency radiation in excess of the current American National Standards Institute ("ANSI") standard. In addition, the staff's study, based on its theoretical application of OST Bulletin No. 65, indicates that the radiofrequency radiation level on the ground surrounding the tower is below the threshold level recommended by the ANSI. The ANSI recommendations have been adopted by the Commission for use in evaluating human exposure to radiofrequency radiation. The staff's study also shows that WRQI would be in compliance with the new more restrictive ANSI standards.¹⁷ Further, any contention that the value of property may be diminished because of its proximity to the WRQI tower is a matter outside the Commission's jurisdiction.

Multiple WRQI Images

Mr. Suffa states in his Engineering Statement dated April 27, 1994 that "[t]he new Phillips stereo supplied by Mr. Groth tuned WRQI (95.1 MHz) between 94.8 MHz and 95.3 MHz. This is well within the skirts of the IF filters in a standard FM radio (and affects only the first adjacent channel to WRQI, which is unusable in the area under FCC protection criteria), and is not considered by this writer to constitute interference." In addition, Mr. Suffa states that "[a]lthough images of the FM station were heard at multiple places on the FM dial, this reception did not appear to affect any station received or used by residents of the household." Also, Mr. Groth states that, "[w]e believe that nearly all of the blanketing interference problems at these homes have been addressed with the exception of the clock radios, where there is adequate reception of many other stations, but some reception is lost within 2 megahertz either side of the carrier of WRQI (95.1Mhz)."

We disagree with Mr. Suffa that the new Phillips stereo received WRQI between 94.8 MHz and 95.3 MHz. The Commission's staff observed WRQI between 94.8 MHz and 95.4 MHz. We also take issue with Mr. Suffa's statement that the blanketing interference will affect only the first

¹⁷ See Notice of Proposed Rule Making, ET Docket No. 93-62, adopted March 11, 1993.

adjacent channel stations (94.9 MHz and 95.3 MHz) to WRQI. We do agree with Mr. Groth that there is blanketing interference within 2 megahertz on either side of the WRQI's carrier frequency (95.1 MHz). Specifically, Mr. Viglione observed that WRQI caused blanketing interference that affected the reception of at least 23 broadcast stations¹⁸ on radio receivers in the complainants' homes. Accordingly, if we are to maintain the integrity of FM radio, we can not condone images appearing at multiple places on the dial that affect broadcast stations.

We note that the WRQI transmitter is operating correctly and that the blanketing interference received is strictly a function of receiver design characteristics. A receiver is considered to be blanketed¹⁹ whenever an FM station's signal strength or signal power density is of such magnitude that it causes the receiver near the transmitting antenna to be partially or completely blocked from receiving other broadcast stations. The signal handling capability of the input stages of the affected receiver are adversely affected by the high signal levels of the blanketing station. As a result the receiver sensitivity is reduced (desensitization). The high signal level may also produce intermodulation products which may interfere with the reception of other stations. The range of the blanketing effect on the receiver can vary from slight to severe. Receivers are designed to operate in an environment consisting of desired and undesired signals. As long as the levels of the signals remain within the design specifications of the receiver, it will operate in a linear and predictable manner. If any of the signals in the environment exceed the design specifications of the receiver, the receiver will begin to operate in a nonlinear manner with unpredictable results.

47 C.F.R. § 73.318(b) states, in pertinent part, that permittees must satisfy all complaints of blanketing interference which are received by the station during the first year of PTA operation. WRQI has not been able to resolve all complaints of blanketing interference even after four years of PTA operation. In the Report and Order²⁰ that adopted the current blanketing rules, the Commission stated that it is our intent to have applicants place blanketing interference high on

¹⁸ Mr. Viglione inadvertently turned his video camera off at 100.5 MHz.

¹⁹ 47 C.F.R. § 73.318 states that areas adjacent to the transmitting antenna that receive a signal with a strength of 115 dBu (562 mV/m) or greater will be assumed to be blanketed. In determining the blanketed area, the 115 dBu contour is determined by calculating the inverse distance field using the effective radiated power (50 kW) of the maximum radiated lobe of the antenna without considering its vertical radiation pattern or height. Therefore, WRQI's blanketing contour area extends 2.79 kilometers (1.73 miles). Since the Mullers' home is approximately 860 meters (2821 feet) away from WRQI's transmitting antenna and the Wards' home is approximately 110 meters (360 feet) away from WRQI's transmitting antenna, both homes are blanketed by WRQI's signal.

²⁰ FM Broadcast Station Blanketing Interference, FCC 84-514, 57 RR 2d 126 (1984).

their priority lists when choosing antenna sites. We did not expect licensees to replace inexpensive, hand held radios with expensive FM tuners, but we declined to include a clause that would protect only receivers of good design. We expect permittees and licensees to meet the intent of this rule and remedy interference. The Commission, in this Report and Order, declined to set receiver interference rejection standards.

Conclusion

The Commission intends that broadcast stations take very seriously their responsibility to resolve blanketing interference. There is no reason why all such cases, if diligently attended to, should not be resolved within the first year of operation. In deciding blanketing cases, the Commission must take into account the amount of time the station has had to correct all instances of blanketing interference. In this case, WRQI has had over four years to resolve the blanketing interference and has not done so. It is clear that they have made repeated attempts to resolve the blanketing interference. It is also clear that the complainants have had their lives disrupted over the last 4 years. Station owners, general managers, technicians and engineering consultants²¹ have entered their homes on numerous occasions at the station's request. We believe that the complainants have been more than patient. The rule requires that all blanketing interference be eliminated and not simply that the station attempt to correct the problems.²² Based on the Commission's inspection of the complainants residences on April 11 and 12, 1994 and June 16, 1994, we find that blanketing interference has not been corrected.

Mr. Suffa states that "[i]t appears that the residents will not be satisfied until all traces of WRQI are eliminated from radio receivers that existed in the house prior to commencement of WRQI's operations, regardless of whether actual reception of desired radio stations is affected." Under the Commission's blanketing rules, the homeowners are entitled to service untainted by blanketing interference from WRQI. Since entertainment programming formats and listeners tastes can change at any time, the Commission must protect all broadcast transmissions equally whether the complainants desire to receive them or not.

The most recent work completed by WRQI's consulting team of Mr. Suffa, Mr. Groth and Mr. Yerks has been commendable. We note, however, that

²¹ In her May 12, 1994 letter, Mrs. Muller states that there have been 21 visits made by a total of 15 different persons working to resolve interference to devices other than telephones. In addition, Mrs. Muller also states that in regard to her telephone interference, there have been 31 visits made by a total of 34 persons. Likewise, in her May 10, 1994 letter, Mrs. Ward states that, "[i]n over four years, there have been over 25 people making twice as many visits to our home. The interference still exists. It was to be eliminated not reduced."

²² See Calvary Educational Broadcasting Network, Inc., 7 FCC Rcd 4040 (1992).

the record does not explain why the station did not take similar action within the first month of operation as Mr. Doyle, the former general manager and part owner of WRQI, promised in 1989 to the Zoning Board.²³

One solution to blanketing interference is to reduce the signal strength of the offending station until the interference is removed. Normally, we would start with a 10 dB reduction in effective radiated power ("ERP"). In this case, a 10 dB reduction in WRQI's ERP to 5.0 kilowatts would require a transmitter power output ("TPO") of 2.5 kilowatts. The Harris HT-30FM transmitter (Serial Number MPS10268500002) in use by WRQI is type-accepted to go only as low as 30%²⁴ of the maximum rated power of 30 kilowatts or 9.0 kilowatts. Therefore, another type-accepted transmitter would be required to maintain a TPO of 2.5 kilowatts. Also, with an ERP of 5.0 kilowatts, WRQI would not cover its city of license, South Bristol Township, NY, with the required signal strength of 3.16 mV/m (70 dBu) pursuant to 47 C.F.R. § 73.315. Thus, this option is untenable.

Due to the long-standing and unresolved interference complaints, we find that the continued operation of WRQI at the Oak Mount Road PTA site is not in the public interest. WRQI(FM) may return to its presently licensed facilities (BMLH-871109KC) with the transmitter located at the end of South Hill Road in South Bristol Township. Since WRQI has a licensed translator station serving the Rochester

²³ See Exhibit B, Minutes of Zoning Board Meetings, included in the April 3, 1992 Reply to Response of Station Licensee to Commission Letter Dated December 13, 1991 submitted by Thomas Jay Solomon, Esq. and Lawrence Roberts, Esq. Specifically, at the October 11, 1989 Town of Bristol Zoning Board of Appeals ("ZBA") meeting, Mr. Doyle was asked whether the WRQI facilities would cause any interference? In response he stated,

If you live between Rochester and the antenna, you might get a "ghost." I suspect that is what is happening. The Wards and the Talones may experience this. Our engineers have told us there will be no problem. We are required by the FCC to correct any problems if they do occur.

In addition, Mr. Doyle stated that, "If there were a problem with our proposal, I would have my engineers at these people's homes in 10 days to help solve the problems."

In an August 22, 1990 letter to Mr. and Mrs. Talone, Mr. Doyle stated that:

In the resolution passed by the ZBA on November 8, 1989 very specific language was included as follows: "The holder of this permit and the owner of the tower shall use their best efforts, using state of the art technology, to resolve any interference caused by its antenna to neighbors within 1,500 feet of the tower.

It is our view that the language would compel us to use our best efforts to any neighbors within 1,500 feet, regardless of when they move in.

²⁴ According to the Equipment Authorization Branch, Office of Engineering and Technology, FCC.

area,²⁵ there will be minimal public impact if WRQI decides to return to its currently licensed site. In order to allow WRQI time to make plans and move equipment, WRQI's program test authority will continue in effect until July 29, 1994.

Accordingly, the requests made in the April 21, 1994 letter from Lawrence Roberts, Esq. and the April 29, 1994 letter from Thomas Jay Solomon, Esq. ARE HEREBY GRANTED to the extent indicated and denied in all other respects. In light of the above, for failure to comply with blanketing rule 47 C.F.R. § 73.318 and pursuant to § 73.1620(b), effective midnight Friday July 29, 1994, WRQI(FM)'s program test authority IS HEREBY REVOKED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

Attachment 1: FOB Memo dated June 21, 1994

cc: EIC, Buffalo
Dorothy Talone
Suffa & Cavell, Inc.
David Groth
Bruce Yerks
Rochester Telephone Company
Seneca-Gorham Telephone

List of 3 complaints that remain unresolved:

Julie Marble
Debbie and Wayne Ward
Tom and Patsy Muller

²⁵ WRQI's stated reason for moving north 7.2 miles to the Oak Mount Road site was to cover Rochester NY with a better signal to alleviate receiver induced third order intermodulation effects (RITOIE) around Pinnacle Hill. On October 30, 1992, WRQI was granted a license for translator Station W238AB located on Pinnacle Hill in Rochester. According to the Engineer In Charge of the Buffalo Field Office, the translator station covers Rochester with a useable signal.

CERTIFICATE OF SERVICE

I, LaVonnia Brown, hereby certify that I have caused a copy of the foregoing Comments to be served on the following person by United States Mail, first-class postage prepaid on this 23rd day of March, 1998:

Mr. Eric C. Kravetz
Brown, Nietert & Kaufman, Chartered
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Suite 660
Washington, DC 20036


LaVonnia Brown